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GORDON *v.* DIRECTOR GENERAL OF RAILROADS

(Southern R. Co.)

Nov. 18, 1920.

[104 S. E. 796.]

**1. Carriers (§ 333 (10\*))—No Recovery When Passenger Steps on Track Immediately in Front of Rapidly Approaching Train.**—Even if there is antecedent negligence by operators of a train, still if passenger, in full possession of his faculties, steps on the track in full view of and immediately in front of a rapidly approaching train, and is killed, there can be no recovery, as his own negligence is the proximate cause.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 591, et seq.]

**2. Carriers (§ 333 (1\*))—Passenger Not Excused from Remaining on or So Near a Track as to Be Struck by a Train.**—A passenger, forced to alight next to a track, cannot be excused from remaining thereon, or in such close proximity thereto as to be struck by a passing train, when it appears she has ample opportunity to get to a position of safety.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 591, et seq.]

**3. Carriers (§ 340\*)—Engineer, under Last Chance Doctrine, Must Use Care as to Passenger Oblivious of Danger.**—While an engineer may ordinarily presume that pedestrians near tracks will observe an approaching train and avoid injury, yet, if a passenger so standing appears oblivious of his danger and apparently will not save himself, the engineer, when he discovers that fact, should do all in his power to avoid injury.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 574, et seq.]

**4. Trial (§ 252 (10\*))—Requested Instruction Properly Refused as Abstract and Misleading.**—In an action for the death of a passenger who had alighted on a road crossing at a station and was struck by a train coming on another track, plaintiff's requested instruction regarding defendant's duty held properly refused because abstract, and containing references to other persons than plaintiff's decedent.

**5. Carriers (§ 348 (12\*))—Requested Instruction on Last Chance Doctrine Approved.**—Plaintiff's requested instruction regarding defendant's duty under the last clear chance doctrine in respect to plaintiff's intestate, who, as a passenger, had alighted from a train

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

and was standing on or near an adjoining track when struck by a train passing thereon, held proper.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 574, et seq.]

**6. Carriers (§ 247 (1\*))—Carrier's Negligence under Last Clear Chance Doctrine a Jury Question.**—Where plaintiff's decedent, a passenger, who had alighted at a station and was struck by a train on another track, was negligent as a matter of law, held that conflicting evidence rendered defendant railroad's negligence under the last clear chance doctrine a jury question.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 574, et seq.]

Error to Circuit Court, Nelson County.

Action by Crawford Gordon, Sr., administrator of Fannie Gordon, deceased, against the Director General of Railroads. Judgment for the defendant, and plaintiff brings error. Reversed and remanded for new trial.

*Caskie & Caskie* and *Volney E. Howard*, both of Lynchburg for plaintiff in error.

*J. T. Coleman, Jr.*, of Lynchburg, for defendant in error.

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BANNISTER *v.* MITCHELL.

Sept. 16, 1920.

[104 S. E. 800.]

**1. Assault and Battery (§ 35, 39\*)—Wanton and Grievous Assault Authorizing Punitive Damages Held Shown.**—Evidence in a civil action for assault and battery, including a plea of guilty of assault on a criminal prosecution, held sufficient to show a wanton and grievous assault for which punitive damages might be awarded.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 742.]

**2. Trial (§ 260 (1\*))—Giving of Requested Instructions Enough to Protect Rights Sufficient.**—It is sufficient that of defendant's requested instructions enough to fully protect his rights were given.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 704, et seq.]

**3. Assault and Battery (§ 3\*)—Civil Liability Though Intent Was to Injure Another.**—Defendant may be civilly liable for cutting plaintiff, though intending not to cut her, but another; his act being unlawful and the result the direct, natural, and probable consequence thereof.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 736, et seq.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.